

directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:**  
Jerald S. Wamsley, EPA Region IX, (415) 947-4111, [wamsley.jerry@epa.gov](mailto:wamsley.jerry@epa.gov).

**SUPPLEMENTARY INFORMATION:** This proposal addresses SJVUAPCD Rules 4403, 4409, 4451, 4452, and 4455. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe these SIP revisions are not controversial. However, if we receive adverse comments, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: February 16, 2006.

**Wayne Nastri,**

*Regional Administrator, Region IX.*

[FR Doc. 06-2813 Filed 3-22-06; 8:45 am]

BILLING CODE 6560-50-P

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R04-OAR-2005-MS-0001-200606; FRL-8048-9]

#### Approval and Promulgation of Implementation Plans; Mississippi Prevention of Significant Deterioration and New Source Review

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve revisions to the Mississippi State Implementation Plan (SIP) to include changes made to Mississippi regulations entitled, "Permit Regulations for the Construction and Operation of Air Emissions Equipment" and "Regulations for the Prevention of Significant Deterioration of Air Quality." The proposed revisions amend the State permitting rules in order to address changes to the federal New Source Review (NSR) regulations, which were promulgated by EPA on December 31, 2002 (67 FR 80186) and reconsidered with minor changes on November 7, 2003 (68 FR 63021) (collectively, these two final actions are called the "2002 NSR Reform Rules"). EPA's 2002 NSR Reform Rules, proposed for inclusion in the Mississippi SIP, contain provisions for baseline emissions calculations, an actual-to-projected-actual methodology for calculating emissions changes, options for plant-wide applicability limits, and recordkeeping and reporting requirements. The proposed revisions also include changes made to the NSR program for minor stationary sources, including a new provision allowing construction to commence on certain minor sources prior to the applicant receiving a final permit to construct.

**DATES:** Comments must be received on or before April 24, 2006.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA-R04-OAR-2005-MS-0001, by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. E-mail: [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).
3. Fax: 404-562-9019.
4. Mail: (Docket ID No. EPA-R04-OAR-2005-MS-0001), Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

**5. Hand Delivery:** Deliver your comments to: Ms. Kelly Fortin, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding Federal holidays.

**Instructions:** Direct your comments to Docket ID No. EPA-R04-OAR-2005-0001. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or e-mail. The <http://www.regulations.gov> Web site is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through <http://www.regulations.gov>, your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

**Docket:** All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically at <http://www.regulations.gov>

[www.regulations.gov](http://www.regulations.gov) or in hard copy at the Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. EPA requests that if at all possible, you contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official business hours are Monday through Friday, 8:30 to 4:30, excluding federal holidays.

**FOR FURTHER INFORMATION CONTACT:** For information regarding the Mississippi SIP, contact Ms. Nacosta Ward, Regulatory Development Section, Air Planning Branch, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960. Telephone number: (404) 562-9140; e-mail address: [ward.nacosta@epa.gov](mailto:ward.nacosta@epa.gov). For information regarding New Source Review, contact Ms. Kelly Fortin, Air Permits Section, at the same address above. Telephone number: (404) 562-9117; e-mail address: [fortin.kelly@epa.gov](mailto:fortin.kelly@epa.gov).

#### **SUPPLEMENTARY INFORMATION:**

Throughout this document, references to "EPA," "we," "us," or "our," are intended to mean the U.S. Environmental Protection Agency. The supplementary information is arranged as follows:

- I. What Action Is EPA Proposing to Take?
- II. What Is the Background for This Action?
- III. What Is EPA's Analysis of Mississippi's NSR Rule Revisions?
- A. Requirements for the Prevention of Significant Deterioration of Air Quality
- B. General Permitting Requirements
- IV. What Action Is EPA Taking Today?
- V. Statutory and Executive Order Reviews

#### **I. What Action Is EPA Proposing to Take?**

On August 10, 2005, the State of Mississippi, through the Mississippi Department of Environmental Quality (MDEQ), submitted revisions to the Mississippi State Implementation Plan (SIP). The SIP submittal consists of revisions to the Mississippi Administrative Code (MAC) regarding Regulations for the Prevention, Abatement, and Control of Air Contaminants. Specifically, the proposed SIP revisions include changes to MDEQ regulations entitled, "Permit Regulations for the Construction and Operation of Air Emissions Equipment," Air Pollution Control Section 2 (APC-S-2), found at MAC 08-034-002, and "Regulations for the Prevention of Significant Deterioration of Air

Quality," Air Pollution Control Section 5 (APC-S-5), found at MAC 08-034-005. MDEQ submitted its revision to APC-S-5 in response to EPA's December 31, 2002, revisions to the federal NSR program. EPA is proposing to approve the submitted SIP revisions to APC-S-2 and APC-S-5.

#### **II. What Is the Background for This Action?**

On December 31, 2002, EPA published final rule changes to 40 Code of Federal Regulations (CFR) parts 51 and 52, regarding the Clean Air Act's Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs. 67 FR 80186. On November 7, 2003, EPA published a notice of final action on the reconsideration of the December 31, 2002, final rule changes. 68 FR 63021. In that November 7th final action, EPA added the definition of "replacement unit," and clarified an issue regarding plant-wide applicability limitations (PALs). The December 31, 2002, and the November 7, 2003, final actions, are collectively referred to as the "2002 NSR Reform Rules." The purpose of today's action is to propose to approve the SIP submittal from the State of Mississippi, which includes the provisions of EPA's 2002 NSR Reform Rules, and a change to Mississippi's minor source NSR program.

The 2002 NSR Reform Rules are part of EPA's implementation of parts C and D of title I of the Clean Air Act (CAA or Act), 42 U.S.C. 7470-7515. Part C of title I of the CAA, 42 U.S.C. 7470-7492, is the PSD program, which applies in areas that meet the National Ambient Air Quality Standards (NAAQS)—"attainment" areas—as well as in areas for which there is insufficient information to determine whether the area meets the NAAQS—"unclassifiable" areas. Part D of title I of the CAA, 42 U.S.C. 7501-7515, is the NNSR program, which applies in areas that are not in attainment of the NAAQS—"nonattainment" areas. Collectively, the PSD and NNSR programs are referred to as the "New Source Review" or NSR programs. EPA regulations implementing these programs are contained in 40 CFR 51.165, 51.166, 52.21, 52.24, and part 51, appendix S.

The CAA's NSR programs are preconstruction review and permitting programs applicable to new and modified stationary sources of air pollutants regulated under the CAA. The NSR programs of the CAA include a combination of air quality planning and air pollution control technology program requirements. Briefly, section

109 of the CAA, 42 U.S.C. 7409, requires EPA to promulgate primary NAAQS to protect public health and secondary NAAQS to protect public welfare. Once EPA sets those standards, states must develop, adopt, and submit to EPA for approval, a SIP that contains emissions limitations and other control measures to attain and maintain the NAAQS. Each SIP is required to contain a preconstruction review program for the construction and modification of any stationary source of air pollution to ensure that the NAAQS are achieved and maintained, to protect areas of clean air, to protect air quality related values (such as visibility) in national parks and other areas, to ensure that appropriate emissions controls are applied, to maximize opportunities for economic development consistent with the preservation of clean air resources, and to ensure that any decision to increase air pollution is made only after full public consideration of the consequences of the decision.

The 2002 NSR Reform Rules made changes to five areas of the NSR programs. In summary, the 2002 NSR Reform Rules: (1) Provide a new method for determining baseline actual emissions; (2) adopt an actual-to-projected-actual methodology for determining whether a major modification has occurred; (3) allow major stationary sources to comply with PALs to avoid having a significant emissions increase that triggers the requirements of the major NSR program; (4) provide a new applicability provision for emissions units that are designated clean units; and (5) exclude pollution control projects (PCPs) from the definition of "physical change or change in the method of operation." On November 7, 2003, EPA published a notice of final action on its reconsideration of the 2002 NSR Reform Rules (68 FR 63021), which added a definition for "replacement unit" and clarified an issue regarding PALs. For additional information on the 2002 NSR Reform Rules, see 67 FR 80186 (December 31, 2002), and <http://www.epa.gov/nsr>.

After the 2002 NSR Reform Rules were finalized and effective (March 3, 2003), industry, state, and environmental petitioners challenged numerous aspects of the 2002 NSR Reform Rules, along with portions of EPA's 1980 NSR Rules (45 FR 52676, August 7, 1980). On June 24, 2005, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit Court) issued a decision on the challenges to the 2002 NSR Reform Rules. *New York v. United States*, 413 F.3d 3 (D.C. Cir. 2005). In summary, the D.C. Circuit

Court vacated portions of the rules pertaining to clean units and PCPs, remanded a portion of the rules regarding recordkeeping, e.g. 40 CFR 52.21(r)(6) and 40 CFR 51.166(r)(6), and either upheld or did not comment on the other provisions included as part of the 2002 NSR Reform Rules. EPA has not yet responded to the Court's remand regarding the recordkeeping provisions. Today's action is consistent with the decision of the D.C. Circuit Court because Mississippi's submittal does not include any portions of the 2002 NSR Reform Rules that were vacated as part of the June 2005, decision.

The 2002 NSR Reform Rules require that state agencies adopt and submit revisions to their SIP permitting programs implementing the minimum program elements of the 2002 NSR Reform Rules no later than January 2, 2006. (Consistent with changes to 40 CFR 51.166(a)(6)(i), state agencies are now required to adopt and submit SIP revisions within 3 years after new amendments are published in the **Federal Register**.) State agencies may meet the requirements of 40 CFR part 51, and the 2002 NSR Reform Rules, with different but equivalent regulations. However, if a state decides not to implement any of the new applicability provisions, that state is required to demonstrate that its existing program is at least as stringent as the federal program. In adopting changes to federal law, a state may write the federal requirements into the state rules or the state may incorporate the federal rule by referencing the citation of the federal rule. As is discussed in greater detail below, with regard to the present revision, Mississippi primarily incorporated the federal rule by reference.

On August 10, 2005, the State of Mississippi submitted a SIP revision for the purpose of revising the State's NSR permitting provisions for both major and minor stationary sources. These changes were made primarily to adopt EPA's 2002 NSR Reform Rules. The submittal also contains revisions to the State's general regulations for the construction and operation of sources of air pollution. These changes are discussed below. EPA believes the revisions contained in the Mississippi submittal are approvable for inclusion into the Mississippi SIP.

### III. What Is EPA's Analysis of Mississippi's NSR Rule Revisions?

Mississippi currently has a SIP-approved NSR program for new and modified stationary sources. Today, EPA is proposing to approve revisions to Mississippi's existing NSR program

in the SIP. These proposed revisions were submitted to EPA on August 10, 2005, and became state-effective on August 27, 2005. Copies of the revised rules, as well as the State's Technical Support Document, can be obtained from the Docket, as discussed in the "Docket" section above. A discussion of the specific changes to Mississippi's rules, proposed for inclusion in the SIP, follows.

#### A. Requirements for Prevention of Significant Deterioration of Air Quality

*Incorporation by reference of 40 CFR 52.21, 51.166(f), and 51.166(q).* The State of Mississippi's PSD program incorporates by reference the federal requirements, found at 40 CFR 52.21, into the State's major source PSD program, found at APC-S-5 (MAC 08-034-005). The original incorporation by reference was adopted on June 28, 1990, and amended in 1991, 1993, and 1996. The current revision to APC-S-5, which EPA is now proposing to approve into the SIP, incorporates by reference the provisions of 40 CFR 52.21, as amended and promulgated on July 1, 2004. In addition, the federal provisions at 40 CFR 51.166(f), "Exclusions from Increment Consumption," and 40 CFR 51.166(q), "Public Participation," are also incorporated by reference into the Mississippi rule. In summary, the revisions update Mississippi's existing incorporation by reference of the federal NSR program to include the 2002 NSR Reform Rules plus subsequent revisions to the federal program made through July 1, 2004.

Mississippi did not adopt those sections of the federal rules that do not apply to state activities or are reserved for the Administrator of the EPA, such as the "delegation of authority," and "plan disapproval" sections found in 40 CFR 52.21. The Mississippi incorporation by reference properly clarified the circumstances in which the term "Administrator," found throughout the federal rules, was to remain Administrator, and when it was intended to refer to the "Mississippi Environmental Quality Board," instead. The Mississippi rule does not incorporate the portions of the federal rules that were recently stayed or vacated, including the clean unit provisions, the PCP exclusion, and the equipment replacement provision which was promulgated shortly after the 2002 NSR Reform Rules.

The revised Mississippi rule includes the recordkeeping provisions set forth in the federal rules at 40 CFR 52.21(r)(6). However, Mississippi chose to exclude the phrase, "reasonable possibility." This phrase in the federal rule limits the

recordkeeping provisions to modifications at facilities that use the actual-to-future-actual methodology to calculate emissions changes and that may have a "reasonable possibility" of resulting in a significant emissions increase. The Mississippi rule, therefore, requires all modifications that use the actual-to-future-actual methodology to meet the recordkeeping requirements. Mississippi's minor source permitting regulations already contain recordkeeping requirements for modifications, so there is limited practical effect of this difference in Mississippi. As noted earlier, EPA has not yet responded to the D.C. Circuit Court's remand of the recordkeeping provisions of EPA's 2002 NSR Reform Rules. As a result, EPA's final decision with regard to the remand may require EPA to take further action on this portion of Mississippi's rules. At this time, however, Mississippi's recordkeeping provisions are at least as stringent as the federal requirements, and are therefore, approvable.

The requirements included in Mississippi's PSD program are substantively the same as the federal provisions, due to Mississippi's incorporation of the federal rules by reference. EPA has, therefore, determined that the proposed revisions are consistent with the program requirements for the preparation, adoption and submittal of implementation plans for the Prevention of Significant Deterioration of Air Quality, as set forth at 40 CFR 51.166, and are approvable as part of the Mississippi SIP.

#### B. General Permitting Requirements

*Minor Source Program Rule Revisions.* Mississippi's general permitting requirements, including permit requirements for minor sources, are contained in the State rule entitled, "Permit Regulations for the Construction and/or Operation of Air Emissions Equipment," (APC-S-2), found at MAC 08-034-002. Today's action proposes to approve recent changes to this rule. EPA has reviewed the proposed revisions and finds them to be consistent with the requirements of EPA's regulations for minor NSR programs found at 40 CFR 51.160 through 51.164.

On May 2, 1995 (60 FR 21443), EPA approved APC-S-2 as meeting the criteria necessary to allow the State of Mississippi to issue federally enforceable state operating permits (FESOPs). The provisions in APC-S-2 that were relied upon for the approval of the FESOP program have not changed with this latest revision of that rule.

Therefore, the FESOP program approval remains effective.

Mississippi's minor source permit regulations do contain a new provision, APC-S-2, Section XV.B., entitled "Optional Pre-Permit Construction," allows construction to commence on certain non-major sources and non-major modifications prior to receiving a final permit to construct, provided certain conditions are met. EPA approved this approach to minor source permitting for the State of Idaho's permit to construct regulations, which were approved into the Idaho SIP in 2003. 68 FR 2217 (January 16, 2003). As discussed below, Mississippi's new provision is consistent with the requirements of section 110(a)(2)(C) of the CAA and federal regulations found at 40 CFR 51.160 through 51.164, including 40 CFR 51.160(b), which requires states to have legally enforceable procedures to prevent construction or modification of a source if it would violate any SIP control strategies or interfere with attainment or maintenance of the NAAQS.

Mississippi's Optional Pre-Permit Construction provision includes requirements and safeguards to ensure that no major source or major modification would be allowed to commence construction prior to receiving a final permit to construct. For example, the provision does not allow new major stationary sources, major modifications, medical waste incinerators, hazardous waste incinerators, any modification involving medical waste incineration or hazardous waste incineration, or new stationary sources or modifications requiring a case-by-case Maximum Achievable Control Technology determination, to commence construction prior to receiving a final permit to construct. Furthermore, no source, including minor sources, can begin actual construction unless the source has received approval from the State in the form of either a written approval described in the rule, or an actual permit to construct.

Mississippi's Optional Pre-Permit Construction provision also includes requirements that limit its applicability to only sources that have sufficiently demonstrated that they will be able to comply with all requirements, and therefore, will receive a final permit to construct. These requirements include: submittal of a comprehensive permit application, public notice of the application for pre-permit construction approval, and written approval from the Permit Board before a source can commence construction. Additionally, the permit application must include the

request for pre-permit construction, certification that construction is at the applicant's risk, certification that the applicant will not contest the final permit on the basis that construction has begun, and certification that the applicant will comply with any restrictions being sought to limit potential to emit, including applicable monitoring and recordkeeping requirements.

Furthermore, the Optional Pre-Permit Construction provision precludes any actual operation of the new or modified source until the final permit to construct is issued. Regardless of the status of the construction, the Permit Board may deny the pre-permit construction approval application, or revoke an existing pre-permit construction approval, for any reason it deems valid, including objections from the public. The Mississippi Optional Pre-Permit Construction provision also allows a source with a valid CAA title V operating permit to incorporate the preconstruction modification provisions into the title V permit, rather than obtaining a separate permit to construct.

Section 110(a)(2)(C) of the CAA requires that state SIPs include a program for regulating the construction and modification of stationary sources as necessary to ensure that the NAAQS are achieved. Federal regulations require that the SIP include a procedure to prevent the construction of a source or modification that would violate a SIP control strategy or interfere with attainment or maintenance of the NAAQS. As discussed above, the Mississippi Optional Pre-Permit Construction provision includes enforceable procedures to prevent the construction of any source or modification that would violate SIP requirements or the NAAQS. Although the Mississippi provision is somewhat different than traditional minor NSR programs in other states, the Mississippi program is consistent with the requirements of the CAA and EPA's regulations, and is therefore approvable as part of the SIP.

#### **IV. What Action Is EPA Proposing To Take?**

EPA is proposing to approve revisions to the Mississippi SIP submitted by MDEQ on August 10, 2005. The submittal consists of revisions to the State "Permit Regulations for the Construction and Operation of Air Emissions Equipment," APC-S-2, and "Regulations for the Prevention of Significant Deterioration of Air Quality," APC-S-5.

#### **V. Statutory and Executive Order Reviews**

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and, therefore, is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104-4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the

State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

#### List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

**Authority:** 42 U.S.C. 7401 *et seq.*

Dated: March 16, 2006.

#### A. Stanley Meiburg,

*Acting Regional Administrator, Region 4.*  
[FR Doc. E6-4199 Filed 3-22-06; 8:45 am]

BILLING CODE 6560-50-P

### ENVIRONMENTAL PROTECTION AGENCY

#### 40 CFR Part 55

[OAR-2006-0091; FRL-8048-4]

#### Outer Continental Shelf Air Regulations Consistency Update for California

**AGENCY:** Environmental Protection Agency ('EPA').

**ACTION:** Proposed rule—consistency update.

**SUMMARY:** EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of States' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act, as amended in 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources by the Ventura County Air Pollution Control District (Ventura County APCD). The intended effect of approving the OCS requirements for the Ventura County APCD is to regulate emissions from OCS sources in

accordance with the requirements onshore. The change to the existing requirements discussed below is proposed to be incorporated by reference into the Code of Federal Regulations and is listed in the appendix to the OCS air regulations.

**DATES:** Any comments must arrive by April 24, 2006.

**ADDRESSES:** Submit comments, identified by docket number OAR-2006-0091, by one of the following methods:

1. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the on-line instructions.

2. E-mail: [steckel.andrew@epa.gov](mailto:steckel.andrew@epa.gov).

3. Mail or deliver: Andrew Steckel (Air-4), U.S. Environmental Protection Agency Region IX, 75 Hawthorne Street, San Francisco, CA 94105-3901.

**Instructions:** All comments will be included in the public docket without change and may be made available online at <http://www.regulations.gov>, including any personal information provided, unless the comment includes Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Information that you consider CBI or otherwise protected should be clearly identified as such and should not be submitted through [www.regulations.gov](http://www.regulations.gov) or e-mail.

[www.regulations.gov](http://www.regulations.gov) is an "anonymous access" system, and EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send e-mail directly to EPA, your e-mail address will be automatically captured and included as part of the public comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment.

**Docket:** The index to the docket for this action is available electronically at <http://www.regulations.gov> and in hard copy at EPA Region IX, 75 Hawthorne Street, San Francisco, California. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available in either location (e.g., CBI). To inspect the hard copy materials, please schedule an appointment during normal business hours with the contact listed in the **FOR FURTHER INFORMATION CONTACT** section.

#### FOR FURTHER INFORMATION CONTACT:

Cynthia Allen, Air Division (Air-4), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 947-4120, [allen.cynthia@epa.gov](mailto:allen.cynthia@epa.gov).

#### SUPPLEMENTARY INFORMATION:

### I. Background Information

#### A. Why Is EPA Taking This Action?

On September 4, 1992, EPA promulgated 40 CFR part 55,<sup>1</sup> which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent under § 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This proposed action is being taken in response to the submittal of requirements submitted by the Ventura County APCD. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act.

Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the

<sup>1</sup> The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.